Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

WCC Associates, Birtcher/BCI, *Petitioners*

v.

Hawaii Carpenters Trust Funds, *Respondent*.

On Petition for a Writ of Certiorari to the
Supreme Court of Hawaii

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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October 1996

25 pp

APPENDIX A

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Attorneys for Lienors
HAWAII CARPENTERS TRUST FUNDS and
THE UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, LOCAL 745, AFL-CIO

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HAWAII CARPENTERS TRUST FUNDS (Health & Welfare Trust Fund by its Trustees, Albert Hamamoto, Gilbert Ancheta, Henry Iida, Albert Belliveau, Roy Iwamoto, Elmer Cabico, Thomas T. Uyetake, Keith Hirota, Tom Jackson, and Gordon S. Higa; Apprenticeship & Training Trust Fund by its Trustees, Conrad Murashige, Sidney Shimokawa, Richmond Keliikoa, David Rosa, Wayne Kawano, Glenn Shirota, Jim Ramirez,	M. L. NO. 93-0139 ORDER GRANTING BIRTCHER/BCI'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT ON LIENORS' APPLICATION FOR MECHANIC'S AND MATERIALMAN'S LIEN This Application Affects Land Designated by Oahu TMK No.: 9-4-7-54 HEARING DATE: March 15, 1994 TIME: 10:00 a.m. JUDGE: The Hon. Wilfred K. Watanabe

Mark Erwin, Toshito Isemoto, and Edward Cantere; Vacation & Holiday Trust Fund by its Trustees, John Murchison, Harry Murakami, Murray Bawden Mark Erwin, Gerard Sakamoto, Curtis Kern, Paul Sasaki, Keith Hirota, Allen Kusano, and James Mawae; Pension Trust Fund by its Trustees, George J. McCarthy, Dante Agra, Pepe D'Bayan, James Maeda, Raymond Nagata, Terence Nakamura, Jiggs Tamashiro, Theodore Hackbarth, Albert Yoshiyama, and Walter H. Kupau; Market Recovery Program by its Trustees, John Murchison, Walter H. Kupau, Larry Isemoto, Melvin Fujii, Allen Kusano, Theodore Hackbarth, Conrad Murashige, Warren Chong, Thalia Choy, and Brian Kawahara; and Financial Security Trust Fund by its Trustees, Bruce Patterson, Gary Heath, Gerard Sakamoto, Walter H. Kupau, Kenneth Sakurai, Robert Moyer, Gordon Scruton, Timothy McCormack, Albert Yoshiyama, and Ralph Yackly; and THE UNITED BROTHERHOOD OF CARPENTERS AND

JOINERS OF AMERICA, LOCAL 745, AFL-CIO,

Lienors,

vs.

WCC ASSOC., a Hawaii Limited Partnership,

Fee Owner,

and

BIRTCHER/BCI, aka BIRTCHER/BCI GENERAL CONTRACTORS, a Hawaii General Partnership,

General Contractor,

and

BCI GENERAL CONTRACTORS, a California corporation,

Co-General Contractor/Contractor,

and

JOHN DOES 1-100; JANE DOES 1-100; DOE CORPORATIONS 1-100; DOE PARTNERSHIPS 1-100 AND DOE ENTITIES 1-100,

Unidentified Parties,

ORDER GRANTING BIRTCHER/BCI'S MOTION TO DISMISS OR, IN THE ALTERNATIVE; FOR SUMMARY JUDGMENT ON LIENORS' APPLICATION FOR MECHANIC'S AND MATERIALMAN'S LIEN

On March 15, 1994 at 10:00 a.m., the motion of Birtcher/BCI to dismiss or, in the alternative, for summary judgment on lienor's application for mechanic's and materialman's lien filed by the Hawaii Carpenters Trust Funds and the United Brotherhood of Carpenters and Joiners of America, Local 745, AFL-CIO on November 1, 1993 came on for hearing before the Honorable Wilfred K. Watanabe. Thomas R. Sylvester appeared on behalf of Birtcher/BCI and WCC Associates and Ashley K. Ikeda appeared on behalf of the Hawaii Carpenter Trust Funds and the United Brotherhood of Carpenters and Joiners of America, Local 745, AFL-CIO.

The Court having reviewed the papers and pleadings filed in support of and in opposition to the motion, having heard the arguments of counsel, and for good cause shown does hereby grant Birtcher/BCI's motion solely on the basis that the Application for Mechanic's and Materialman's Lien and Demand for Payment filed herein is preempted by the Employee Retirement Income Security Act of 1974. (Birtcher/BCI's motion is denied on the basis that the Application for Mechanic's and Materialman's Lien and Demand for Payment is barred by the doctrine of collateral estoppel.)

NOW, THEREFORE, IT IS HEREBY ORDERED that Birtcher/BCI's Motion To Dismiss Or, In The Alternative, For Summary Judgment On Lienors' Application For Mechanic's And Materialman's Lien Filed By The Hawaii Carpenters Trust Funds On November 1, 1993 is granted on the basis that the Application For Mechanic's And Materialman's Lien and Demand For Payment is preempted by the Employee Retirement Income Security Act of 1974.

DATED: Honolulu, Hawaii, September 22, 1994

/s/ WILFRED K. WATANABE

FOR THE HONORABLE WENDELL K. HUDDY
JUDGE OF THE ABOVE-ENTITLED COURT

HAWAII CARPENTERS TRUST FUNDS AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 745, AFL-CIO vs. BCI GENERAL CONTRACTORS and WCC ASSOCIATES; M. L. No. 93-0139; Order Granting Birtcher/BCI's Motion To Dismiss Or, In The Alternative, For Summary Judgment On Lienors' Application For Mechanic's And Materialman's Lien

APPENDIX B

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HAWAII CARPENTERS TRUST FUNDS (Health & Welfare Trust Fund by its Trustees, Albert Hamamoto, Gilbert Ancheta, Henry Iida, Albert Belliveau, Roy Iwamoto, Elmer Cabico, Thomas T. Uyetake, Keith Hirota, Tom Jackson, and Gordon S. Higa; Apprenticeship & Training Trust Fund by its Trustees, Conrad Murashige, Sidney Shimokawa, Richmond Keliikoa, David Rosa, Wayne Kawano, Glenn Shirota, Jim Ramirez,

M. L. NO. 93-0140

ORDER GRANTING BIRTCHER/BCI'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT ON LIENORS' APPLICATION FOR MECHANIC'S AND MATERIALMAN'S LIEN

This Application Affects Land Designated by Oahu TMK No.: 9-4-7-54

HEARING DATE: March 17, 1994
TIME: 10:00 a.m.
JUDGE: The Hon. Wilfred K. Watanabe

Mark Erwin, Toshito Isemoto, and Edward Cantere; Vacation & Holiday Trust Fund by its Trustees, John Murchison, Harry Murakami, Murray Bawden, Mark Erwin, Gerard Sakamoto, Curtis Kern, Paul Sasaki, Keith Hirota, Allen Kusano, and James Mawae; Pension Trust Fund by its Trustees, George J. McCarthy, Dante Agra, Pepe D'Bayan, James Maeda, Raymond Nagata, Terence Nakamura, Jiggs Tamashiro, Theodore Hackbarth, Albert Yoshiyama, and Walter H. Kupau; Market Recovery Program by its Trustees, John Murchison, Walter H. Kupau, Larry Isemoto, Melvin Fujii, Allen Kusano, Theodore Hackbarth, Conrad Murashige, Warren Chong, Thalia Choy, and Brian Kawahara; and Financial Security Trust Fund by its Trustees, Bruce Patterson, Gary Heath, Gerard Sakamoto, Walter H. Kupau, Kenneth Sakurai, Robert Moyer, Gordon Scruton, Timothy McCormack, Albert Yoshiyama, and Ralph Yackly); and THE UNITED BROTHERHOOD OF CARPENTERS AND

JOINERS OF AMERICA, LOCAL 745, AFL-CIO,

Lienors,

vs.

WCC ASSOCIATES, a Hawaii Limited Partnership,

Fee Owner,

and

BIRTCHER/BCI, aka BIRTCHER/BCI GENERAL CONTRACTORS, a Hawaii General Partnership,

General Contractor,

and

BCI GENERAL CONTRACTORS, a California corporation,

Co-General Contractor/Contractor,

and

YOST ENTERPRISES, INC., aka YOST GYPSUM, an Arizona corporation,

Subcontractor,

and

JOHN DOES 1-100; JANE DOES 1-100; DOE CORPORATIONS 1-100; DOE PARTNERSHIPS 1-100 AND DOE ENTITIES 1-100,

Unidentified Parties,

ORDER GRANTING BIRTCHER/BCI'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT ON LIENORS' APPLICATION FOR MECHANIC'S AND MATERIALMAN'S LIEN

On March 17, 1994 at 10:00 a.m., the motion of Birtcher/BCI to dismiss or, in the alternative, for summary judgment on lienor's application for mechanic's and materialman's lien filed by the Hawaii Carpenters Trust Funds and the United Brotherhood of Carpenters and Joiners of America, Local 745, AFL-CIO on November 1, 1993 came on for hearing before the Honorable Wilfred K. Watanabe. Thomas R. Sylvester appeared on behalf of Birtcher/BCI and WCC Associates and Ashley K. Ikeda appeared on behalf of the Hawaii Carpenter Trust Funds and the United Brotherhood of Carpenters and Joiners of America, Local 745, AFL-CIO.

The Court having reviewed the papers and pleadings filed in support of and in opposition to the motion, having heard the arguments of counsel, and for good cause shown does hereby grant Birtcher/BCI's motion solely on the basis that the Application for Mechanic's and Materialman's Lien and Demand for Payment filed herein is preempted by the Employee Retirement Income Security Act of 1974. (Birtcher/BCI's motion is denied on the basis that the Application for Mechanic's and Materialman's Lien and Demand for Payment is barred by the doctrine of collateral estoppel.)

NOW, THEREFORE, IT IS HEREBY ORDERED that Birtcher/BCI's Motion To Dismiss Or, In The Alternative, For Summary Judgment On Lienors' Application For Mechanic's And Materialman's Lien Filed By The Hawaii Carpenters Trust Funds On November 1, 1993 is granted on the basis that the Application For Mechanic's And Materialman's Lien And Demand For Payment is preempted by the Employee Retirement Income Security Act of 1974.

DATED: Honolulu, Hawaii, September 22, 1994

/s/ WILFRED K. WATANABE

FOR THE HONORABLE WENDELL K. HUDDY
JUDGE OF THE ABOVE-ENTITLED COURT

HAWAII CARPENTERS TRUST FUNDS AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 745, AFL-CIO vs. BCI GENERAL CONTRACTORS and WCC ASSOCIATES; M. L. No. 93-0140; Order Granting Birtcher/BCI's Motion To Dismiss Or, In The Alternative, For Summary Judgment On Lienors' Application For Mechanic's And Materialman's Lien

APPENDIX C

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HAWAII CARPENTERS TRUST FUNDS (Health & Welfare Trust Fund by its Trustees, Albert Hamamoto, Gilbert Ancheta, Henry Iida, Albert Belliveau, Roy Iwamoto, Elmer Cabico, Thomas T. Uyetake, Keith Hirota, Tom Jackson, and Gordon S. Higa; Apprenticeship & Training Trust Fund by its Trustees, Conrad Murashige, Sidney Shimokawa, Richmond Keliikoa, David Rosa, Wayne Kawano, Glenn Shirota, Jim Ramirez, Mark Erwin, Toshito Isemoto, and Edward Cantere; Vacation & Holiday Trust Fund by its Trustees, John Murchison, Harry Murakami,	M. L. NO. 93-0139 JUDGMENT DISMISSING LIEN APPLICATION

Murray Bawden, Mark Erwin, Gerard Sakamoto, Curtis Kern, Paul Sasaki, Keith Hirota, Allen Kusano, and James Mawae; Pension Trust Fund by its Trustees, George J. McCarthy, Dante Agra, Pepe D'Bayan, James Maeda, Raymond Nagata, Terence Nakamura, Jiggs Tamashiro, Theodore Hackbarth, Albert Yoshiyama, and Walter H. Kupau; Market Recovery Program by its Trustees, John Murchison, Walter H. Kupau, Larry Isemoto, Melvin Fujii, Allen Kusano, Theodore Hackbarth, Conrad Murashige, Warren Chong, Thalia Choy, and Brian Kawahara; and Financial Security Trust Fund by its Trustees, Bruce Patterson, Gary Heath, Gerard Sakamoto, Walter H. Kupau, Kenneth Sakurai, Robert Moyer, Gordon Scruton, Timothy McCormack, Albert Yoshiyama, and Ralph Yackly; and THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 745, AFL-CIO,

Lienors,

vs.

WCC ASSOC., a Hawaii Limited Partnership,

Fee Owner,

and

BIRTCHER/BCI, aka BIRTCHER/BCI GENERAL CONTRACTORS, a Hawaii General Partnership,

General Contractor,

and

BCI GENERAL CONTRACTORS, a California corporation,

Co-General Contractor/Contractor,

and

JOHN DOES 1-100; JANE DOES 1-100; DOE CORPORATIONS 1-100; DOE PARTNERSHIPS 1-100 AND DOE ENTITIES 1-100,

Unidentified Parties,

JUDGMENT DISMISSING LIEN APPLICATION

WHEREAS ON November 1, 1993, Lienors Hawaii Carpenters Trust Funds and the United Brotherhood of Carpenters And Joiners Of America, Local 745, AFL-CIO, filed an Application For Mechanic's And Materialman's Lien And Demand For Payment; Notice Of Mechanic's And Materialman's Lien And Demand For Payment; Exhibits "A" and "B"; Affidavit Of Paul Marx; Affidavit Of Walter H. Kupau; Notice Of Hearing Of Application For Mechanic's And Materialman's Lien And Demand For Payment; Order Of Service;

WHEREAS ON February 28, 1994, Respondent Birtcher/BCI General Contractors filed a Motion To Dismiss Or, In The Alternative, For Summary Judgment On Lienor's Application For Mechanic's And Materialman's Lien Filed By The Hawaii Carpenters Trust Funds On November 1, 1993; Memorandum In Support Of Motion; Affidavit Of Counsel; Exhibits "A-F"; Notice Of Hearing Of Motion And Certificate Of Service, which was subsequently joined by Respondent WCC Associates. Said Motion came on for hearing before the Honorable Wilfred K. Watanabe on March 15, 1994, wherein Judge Watanabe granted said Motion. Thereafter, an Order Granting Birtcher/BCI's Motion To Dismiss Or, In The Alternative, For Summary Judgment On Lienor's Application For Mechanic's And Materialman's Lien was filed herein on September 23, 1994.

IT IS HEREBY ORDER, ADJUDGED AND DECREED THAT:

1. Judgment is entered in favor of Respondents Birtcher/BCI General Contractors and WCC Associates and against Lienors Hawaii Carpenters Trust Funds and The United Brotherhood Of Carpenters And Joiner Of America, Local 745, AFL-CIO.

2. Lienors Hawaii Carpenters Trust Funds and The United Brotherhood Of Carpenters And Joiners Of America, Local 745, AFL-CIO's Application For Mechanic's And Materialman's Lien And Demand For Payment filed herein on November 1, 1993 is hereby dismissed as to all parties to this proceeding.

3. Accordingly, there are no remaining claims, issues, and/or parties to this proceeding.

DATED: Honolulu, Hawaii, October 12, 1994

/s/ WENDELL K. HUDDY

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

/s/

THOMAS R. SYLVESTER, ESQ
Attorney for Respondents
BIRTCHER/BCI GENERAL CONTRACTORS
and WCC ASSOCIATES

APPENDIX D

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Murray Bawden, Mark Erwin, Gerard Sakamoto, Curtis Kern, Paul Sasaki, Keith Hirota, Allen Kusano, and James Mawae; Pension Trust Fund by its Trustees, George J. McCarthy, Dante Agra, Pepe D'Bayan, James Maeda, Raymond Nagata, Terence Nakamura, Jiggs Tamashiro, Theodore Hackbarth, Albert Yoshiyama, and Walter H. Kupau; Market Recovery Program by its Trustees, John Murchison, Walter H. Kupau, Larry Isemoto, Melvin Fujii, Allen Kusano, Theodore Hackbarth, Conrad Murashige, Warren Chong, Thalia Choy, and Brian Kawahara; and Financial Security Trust Fund by its Trustees, Bruce Patterson, Gary Heath, Gerard Sakamoto, Walter H. Kupau, Kenneth Sakurai, Robert Moyer, Gordon Scruton, Timothy McCormack, Albert Yoshiyama, and Ralph Yackly); and THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 745, AFL-CIO,

Lienors,

vs.

WCC ASSOCIATES, a Hawaii Limited Partnership,

Fee Owner,

and

BIRTCHER/BCI, aka BIRTCHER/BCI GENERAL CONTRACTORS, a Hawaii General Partnership,

General Contractor,

and

BCI GENERAL CONTRACTORS, a California corporation,

Co-General Contractor/Contractor,

and

YOST ENTERPRISES, INC., aka YOST GYPSUM, an Arizona corporation,

Subcontractor

and

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Unidentified Parties,

JUDGMENT DISMISSING LIEN APPLICATION

WHEREAS ON November 1, 1993, Lienors Hawaii Carpenters Trust Funds and The United Brotherhood of Carpenters And Joiners Of America, Local 745, AFL-CIO, filed an Application For Mechanic's And Materialman's Lien And Demand For Payment; Notice Of Mechanic's And Materialman's Lien And Demand For Payment; Exhibits "A" and "B"; Affidavit Of Paul Marx; Affidavit Of Walter H. Kupau; Notice Of Hearing Of Application For Mechanic's And Materialman's Lien And Demand For Payment; Order Of Service;

WHEREAS ON February 28, 1994, Respondent Birtcher/BCI General Contractors filed a Motion To Dismiss Or, In The Alternative, For Summary Judgment On Lienor's Application For Mechanic's And Materialman's Lien Filed By The Hawaii Carpenters Trust Funds On November 1, 1993; Memorandum In Support Of Motion; Affidavit Of Counsel; Exhibits "A-F"; Notice Of Hearing Of Motion And Certificate Of Service, which was subsequently joined by Respondent WCC Associates. Said Motion came on for hearing before the honorable Wilfred K. Watanabe on March 17, 1994, wherein Judge Watanabe granted said Motion. Thereafter, an Order Granting Birtcher/BCI's Motion To Dismiss Or, In The Alternative, For Summary Judgment On Lienor's Application For Mechanic's And Materialman's Lien was filed herein on September 23, 1994.

IT IS HEREBY ORDER, ADJUDGED AND DECREED THAT:

1. Judgment is entered in favor of Respondents Birtcher/BCI General Contractors and WCC Associates and against Lienors Hawaii Carpenters Trust Funds and The United Brotherhood Of Carpenters And Joiner Of America, Local 745, AFL-CIO.

2. Lienors Hawaii Carpenters Trust Funds and The United Brotherhood Of Carpenters And Joiner Of America, Local 745, AFL-CIO's Application For Mechanic's And Materialman's Lien And Demand For Payment filed herein on November 1, 1993 is hereby dismissed as to all parties to this proceeding.

3. Accordingly, there are no remaining claims, issues, and/or parties to this proceeding.

DATED: Honolulu, Hawaii, October 12, 1994

/s/ WENDELL K. HUDDY

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

/s/

THOMAS R. SYLVESTER, ESQ
Attorney for Respondents
BIRTCHER/BCI GENERAL CONTRACTORS
and WCC ASSOCIATES